IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8637 OF 2004

Suhas Vishwanath Kalghatgi ..Petitioner.

Vs.

Surendra Madhav Vijaykar,
since deceased
Smt.Prema Surendra Vijaykar & Ors...Respondents.

....

Mr.N.V.Mhatre for the Petitioner.

Mr.V.R.Walawalkar with Mr.S.R.Bhalekar for
Respondent Nos.1 to 5.

...

**CORAM : DR.D.Y.CHANDRACHUD, J.**

10th June, 2005.

P.C. :

1. The decree for eviction which has been passed by both the Courts below is liable to be sustained in my view on the ground of non-user of the premises. The evidence has been evaluated by both the Courts below. Electricity bills constitute an important piece of documentary

material to establish the user, or as the case may be, the non-user of residential premises. In the present case, the discussion contained in paragraph 20 of the judgment of the Trial Court would show that the electricity bills which were produced on behalf of the Petitioner are of the period prior to 1988 and, for a period much after the institution of the suit. The suit was instituted on 14th February, 1994. Hence the period of alleged non-user that would be relevant for determining whether a ground for eviction has been established under Section 13(1)(k) of the Rent Act would be the period of six months prior to the institution of the suit, from 14th August, 1993 till 14th February, 1994. The electricity bills that were produced did not relate to this period of six months. As a matter of fact no electricity bills were forthcoming for the period after 1988 and for a period of six years before the institution of the suit on 14th February, 1994. If the flat had been used, the primary evidence that would reflect such user would be the consumption of electricity. Electricity bills for the period from 1998 are obviously bills much after the institution of the suit on which no reliance can be placed. There was

no telephone connection in the suit premises and it has been found that as a matter of fact a phone connection has been obtained in the premises at Santacruz to which the Petitioner has shifted.

2. Counsel appearing for the Respondents has drawn the attention of the Court to the evidence of the Petitioner in regard to the place where his children had schooled. From the notes of cross examination recorded on 17th December, 2002 it emerges that the Petitioner's daughter and son had initially schooled at I.A.S. School, Shivaji Park (the suit premises being also situated at Shivaji Park). However, they left the school at Shivaji Park in the year 1989 and thereafter, studied at B.P.M. High School, Khar until the year 1995-96. It is, therefore, urged on behalf of the Respondents and, in my view not without merit, that this is one more indicator to support the finding of fact which has been arrived at by both the Courts below about the non-user of the suit premises.

3. The considered findings of both the Courts below do not warrant any interference. I am of the

view that the decree for eviction should be sustained on this ground. The Petition is, in the circumstances, dismissed. However, having regard to the facts and circumstances of the case, time to vacate the premises is granted to the Petitioner until 31st December, 2005 subject to the filing of the usual undertaking within a period of four weeks from today.